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**Before the
Federal Communications Commission
Washington, DC 20554**

MAR 15 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**In the Matter Of
IMPROVING COMMISSION PROCESSES**

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PP Docket No. 96-17

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**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

**NATIONAL ASSOCIATION OF
BROADCASTERS**

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EXECUTIVE SUMMARY

The National Association of Broadcasters herein offers several suggestions for reducing many of the delays and burdens stemming from certain of the Federal Communications Commission's procedures and policies. NAB comments on several of the proposals addressed in the Commission's Notice. But, we also raise some additional points which we believe should be explored in this omnibus review.

Among the areas where we believe there should be significant reform include: the adoption of a self-certification system for authorizations not involving engineering or interference matters; consolidation of the Commission's assignment and transfer processing functions; reform of the fee processing system; review of station contract filing requirements; forbearance from enforcing the lottery laws; automating the call sign assignment process; revising the ownership reporting requirements; and adopting a system for electronic filing of applications and reports.

By taking these steps, the Commission will expedite its provision of service to regulatees and will eliminate needless burdens on itself, the public and those it regulates.

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I. INTRODUCTION AND SUMMARY

At the outset, the National Association of Broadcasters ("NAB")¹ welcomes this opportunity to offer commentary and recommendations as the Federal Communications Commission ("FCC" or "Commission") addresses the range of needed reforms to its processes and procedures. With a reduced federal budget, it is essential that the FCC address these issues squarely and adopt near-term steps that will achieve meaningful and rational regulatory reform.

In these comments, NAB offers a number of suggestions for reducing many of the burdens -- on the Commission and on its regulatees -- stemming from several of the FCC's procedures and policies. Many of our recommendations would lead to reduced paperwork and fewer delays associated with the Commission's processes. Taking the steps recommended below would benefit the Commission, its regulatees and the public.

¹ NAB is a non-profit, incorporated association of radio and television stations and broadcast networks which serves and represents the American broadcasting industry.

However, in those areas relating to the Commission's core responsibilities of broadcast regulation -- the maintenance of interference-free broadcast services and the promotion of broadcast localism -- we strongly urge the FCC to move carefully in its review and revision of its rules and policies.

Here, NAB submits comments on many of the regulatory areas set forth in the Commission's Notice of Inquiry ("Notice").² We also suggest other areas for FCC consideration as it conducts this broad-based review of rules and policies.

NAB recommends that the Commission move quickly to the rulemaking stage in those areas where we are urging regulatory reform and where a notice-and-comment proceeding is required to meet the requirements of the Administrative Procedure Act.³ However, on several of the purely procedural issues addressed below, the Commission has the option to revise or remove its policies and procedures immediately.

II. PRIVATE CERTIFICATION IN LIEU OF FCC EXAMINATION OF MATERIALS IN APPLICATIONS

The Notice seeks comment on the possible streamlining of the FCC service-authorization process techniques to allow parties to "self certify" all or various portions of an application seeking an FCC authorization. The concept is based on the premise that such self-certification would obviate the need for thorough FCC staff review and, thus,

² Notice of Inquiry in PP Docket No. 96-17, FCC 96-50, adopted February 8, 1996, released February 14, 1996.

³ 5 U.S.C. §553 (1995).

would lead to faster action on a wide range of applications, from transfers/assignments to the authorization of new or modified facilities.

NAB believes that the concept of self-certification is worthy of further pursuit by the agency. However, and as explained below, we oppose use of this concept for applications that would involve new or modified facilities. The Commission must not abrogate its fundamental obligation to review all such applications (as well as petitions to amend the FM and TV Tables) to ensure that grant of a request would not cause interference to the service offered by other licensees/permittees and to ensure the equitable distribution of authorizations according to sound allocation plans.

1. Non-Technical Certification

For applications not involving engineering/interference matters (e.g. transfer or assignment applications), NAB believes that the Commission should develop a self-certification program. Indeed, this program likely could be the “test” or “prototype” for what may be subsequent programs where self-certification would be appropriate.

Though NAB would support such a concept for transfer/assignment⁴ and certain other applications, we believe that any self-certification approach should adhere to several principles. These include: (1) the need for full supporting information to be submitted to the Commission (and placed in publicly accessible files); (2) the requirement that applicants be given additional information (beyond that found in existing application forms

⁴ Concerning FCC Form 316 pro forma applications, NAB recommends that the Commission consider reforms that would require only “notification” to the FCC (a notification which would be the subject of an FCC public notice), with the transfer being “granted” after the passage of a specific period of days, unless an objection were lodged by another party or the FCC staff wished to make further inquiry into the matter.

and instructions) addressing all areas upon which the FCC processing staff currently focuses its review of such applications; and (3) the ability of broadcasters to be able to avail themselves of such a self-certification program without the need to hire outside communications counsel or other professionals either to "attest" to the veracity of the materials and statements contained in the application or to make the "certification" as to the applicant's compliance with relevant FCC rules and policies.

Under this regime, broadcasters would submit more than just a certification. The materials filed at the agency would include all those customarily required, so that members of the public (as well as the Commission's staff, where the need arose) would be able to review the nature of the application and make a knowledgeable decision as to whether further inquiry/action would be warranted.

Because of the severe penalties which attach to any "misrepresentation" to the Commission, we believe there are sufficient incentives for a broadcaster or other applicant to take the steps necessary to ensure that all parts of the application -- as well as the covering "certification" -- not amount to any form of misrepresentation. Thus, it should not be necessary, in our view, for the applicant to employ the services of an attorney who would merely certify the completeness, accuracy and rule compliance of the application.

However, to ensure that an applicant is familiar with all aspects of those FCC rules and policies relevant to the application, we urge the Commission to expand its current form instructions to provide not only additional detail but also a "checklist" of matters which should be reviewed prior to the submission of the form and the certification to the FCC. This additional information, including the publication of what essentially is the

current FCC staff "checklist" employed for review of applications, would enhance greatly the likelihood of such applications meeting the Commission's requirements.⁵

2. Certification of Technical/Engineering Matters

For the reasons articulated above, NAB does not support the use of a certification in lieu of thorough FCC examination of the interference and engineering consequences of the grant of construction permit applications for authorization of new or modified facilities. The potential for the increase in intolerable interference poses too great a risk.

III. CONSOLIDATION OF FCC ASSIGNMENT/TRANSFER PROCESSING

In recent years, the need to obtain FCC approval of the transfer of licenses in various services has delayed mergers and acquisitions -- particularly of large group owners and communications conglomerates. A typical example is where two communications groups are combined and there is a need to transfer main station licenses, broadcast auxiliary licenses, CARS band license, earth station licenses, or other FCC licenses. Some license transfers are achieved promptly; but the entire transaction is "held up" by the failure of as little as one FCC office to process a single transfer application in a timely fashion. This problem is expected to occur with even greater frequency in the near term because of the ownership regulatory reforms coming from the Telecommunications Act.⁶

⁵ An analogy can be drawn to the effects of the Compliance and Information Bureau's publication of its staff broadcast station "inspection checklist." This checklist enables broadcasters to better ensure their own rule compliance through periodic licensee-conducted (or third-party-conducted) "mock inspections" of stations.

⁶ Pub L. 104-104, 110 Stat. 56 (1996).

One way of remedying this problem is for the Commission to consolidate its assignment and transfer functions across bureau and office jurisdictional lines. In this fashion, a staff of FCC employees -- well-versed in transfer/assignment considerations in all services -- could make swift work of the transfer process.

IV. REFORM OF THE FCC APPLICATION FEE PROCESSING SYSTEM

One aspect of the Commission's processes which always creates an unnecessary delay is the requirement that all "feeable" applications be sent to the agency's lockbox bank in Pittsburgh, rather than to the FCC itself, where the actual processing will take place. In every case this "bounce-pass" back from Pittsburgh incurs several days' delay before FCC staff processing may begin; in many documented cases the delays have involved weeks and months, the latter due to documents being lost in transit from Pennsylvania to the FCC's processing offices.⁷

A simple reform would allow applicants to send their applications to the FCC (at Washington or Gettysburg, depending on the nature of the application) and the fees to Pittsburgh. The FCC could check -- electronically or by other means -- with Pittsburgh prior to the grant of the application to ensure that the fee had been paid. If the Commission plans to move toward electronic filing of applications, it will have to adopt a procedure such as this -- which separates the filing of the application from the payment of the fee. One approach would be to develop a process to assign unique identifying

⁷ In addition, the date-stamping procedure used at the Mellon Bank is often unreliable.

numbers to feasible applications and filings and to require that the identifying number be used in connection with both the filing and the fee.

V. SUBMISSION OF STATION CONTRACTS

During the Commission's review -- in this inquiry or elsewhere -- of its processes and other rules, we urge the Commission to consider dramatic changes to the requirement for the filing of various contracts with the Commission.⁸ Though some of these contract filing requirements are relevant to current, core FCC regulatory programs (e.g., that applying to attributable radio time brokerage agreements among stations), much of the contractual material required to be filed under the Commission's Rules is never examined by the FCC staff (or anyone else) because it has little if any bearing on the Commission's regulatory programs.

As such, we urge thorough review of these filing requirements -- requirements which, at most, could be replaced by rules calling only for the maintenance of such records at the station. There, the documents would be available for inspection by the FCC staff or by the public, if necessary.

VI. PETITIONS TO AMEND THE TV AND FM TABLES OF ALLOTMENTS

Above, we have discussed our concerns over the use of bare certifications in the filing of applications involving engineering matters. The same concerns apply to petitions to amend the FM and TV tables of assignments. The interests of preserving broadcast

⁸ See 47 CFR §73.3613.

localism and interference-free service are of such paramount importance that it is incumbent upon the Commission to review all such proposals in light of its allocations policies. Indeed, now may well be the time for the Commission simply to cease all this new station activity until it has accomplished its tasks in several high-profile proceedings -- such as the adoption of a final allocation/assignment of transition spectrum for Advanced Television.⁹ Correspondingly, it may well be the time, as the Commission acts to approve further consolidation of radio and television operations under the terms of the Telecommunications Act, to halt the kind of new station authorization that in large part has caused such consolidations and cost savings. Such a course would be particularly appropriate in light of the fact that the Commission has no system for evaluating among competing applicants, does not have auction authority for such matters and has not established any system of random selection for making choices among competing applicants.

VII. FORBEARANCE FROM LOTTERY LAW ENFORCEMENT

In its most recent legislative recommendations to the Congress¹⁰ the Commission urged complete rescission of the broadcast/cable "lottery" provision of the criminal code.¹¹ A similar legislative change was embodied in S. 652, the Senate bill leading to the final

⁹ See 47 U.S.C. § 336, as amended by the Telecommunications Act of 1966, *supra* note 6.

¹⁰ See Creating a Federal Communications Commission for the Information Age, Report of the Special Counsel to the Commission on Reinventing Government, February 1, 1995, Appendix A.

¹¹ 18 U.S.C. §1304.

Telecommunications Act. However, the Telecommunications Act, as passed by the Congress and signed by the President, did not include this provision.

Since 1990, broadcast stations have been allowed to advertise charitable and occasional and ancillary business lotteries, so long as they are legal in the state in which they are conducted.¹² Enforcement of the lottery provision now requires the Commission to determine whether a promotion is an illegal lottery under state law, which means that the Commission must now determine how each state's law is being determined by state authorities. This can be a burdensome and time-consuming process, which often expends valuable Commission resources that could be better used on other activities. NAB, therefore, urges the Commission to consider forbearing from enforcement of the lottery provisions.

More recently, the Commission has been petitioned to forbear from its enforcement of the lottery laws (and the corresponding Commission rules) as they apply to the advertising of casino gambling not on Indian lands.¹³ The Commission should grant this petition and cease efforts to enforce the lottery laws. These laws are a source of unending confusion to advertisers and broadcasters. There is no reason to believe that state law enforcement efforts are not entirely adequate to ensure compliance with state lottery laws. With respect to advertising that may be barred only by federal law, the

¹² Order, 5 FCC Rcd. 3019 (1990) (implementing the Charity Games Advertising Clarification Act of 1988, Pub. L. No. 100-625, 102 Stat. 3205).

¹³ See "Petition for Declaratory Ruling Regarding Section 73.1211 of the Rules of the Federal Communications Commission," filed by Players International on March 1, 1996.

Commission should defer to the Department of Justice which, after all, has the primary responsibility for enforcing these provisions.

VIII. CALL SIGNS

One aspect of the Commission's Notice to which there can be little opposition deals with the proposal to expedite the assignment of call signs and call sign changes through automated means. For far too long, broadcasters have had to deal with the uncertainty and prolonged delays associated with the current call sign system. Licensees have seen well-designed promotional plans and format changes delayed or even abandoned due to the sluggish pace of call sign authorizations.

The "Smart" system discussed in the Commission's Notice appears to be one of genuine merit, which should be adopted as soon as practicable. While even a move to call sign "privatization" would be an improvement over the current system, it is our view that this function should remain within the Commission, but streamlined and enhanced through the Smart system.

IX. OWNERSHIP REPORT (FCC FORM 323)

One procedural change that could be accomplished immediately and result in significant cost savings to the industry and to the Commission, would be to alter the Commission's rules regarding the filing of ownership information on FCC Form 323. Instead of the current requirement for annual submission of a revised form or "no change"

letter, we believe a less frequent filing requirement would serve any legitimate need of the Commission.

Certainly, any change in ownership resulting in a "transfer of control" would require FCC approval, not just reporting. With that factor in mind, and in light of the statutorily-required extension of broadcast license terms to eight years, we urge the adoption of an FCC policy whereby ownership information (an updated FCC Form 323 or "no change" letter) is submitted only at license renewal time and at the mid-point of the license term. This every-four-years requirement should be sufficient to meet the Commission's needs and that of the public. The Commission, of course, would obtain revised ownership information in those situations where there is a transfer of control or assignment of license.

X. ELECTRONIC FILING

The Commission asks whether it should allow electronic filing, either on diskette, via electronic mail, or over the Internet, of applications and other Commission filings. NAB strongly supports this effort. Electronic filing will reduce the burden on the Commission of managing paper filings and permit licensees and practitioners who are not located in Washington easier access to the Commission. If the FCC proceeds with its announced move to The Portals, the availability of electronic filing will also reduce the burden of having to carry documents to the Commission's new location through rush-hour traffic.

Certainly, the Commission could move quickly to accept filings on diskette or through e-mail. Obviously, it must develop some ability to acknowledge receipt of such filings and should adopt some standards to assure uniformity of filings. Once those tasks are accomplished, filing of comments and other non-application materials could move quickly to electronic form. The filing of applications may require some additional steps, such as adoption of a uniform numbering scheme (as described above) to permit the Commission to coordinate application and fee filings. Further, the Commission will have to ensure the integrity and confidentiality, where appropriate, for materials filed electronically. To ensure access by all licensees and practitioners to the Commission, NAB believes that electronic filing should be an option and that traditional paper filings must continue to be accepted by the Commission.

Even before the Commission moves to accept documents electronically, NAB supports the Commission's efforts to place copies of all FCC forms on the Internet. This will make it far easier for licensees across the country to obtain the forms and other information they need to comply with the Commission's rules.

XI. CONCLUSION

For the reasons stated above, we recommend that the Commission take swift steps to reform many of its processes. However, on those matters concerning broadcast localism and the prevention of objectionable interference to the over-the-air broadcast services (as well as to auxiliary broadcast services), NAB strongly opposes regulatory

reforms that would threaten these fundamental and statutorily-based regulatory responsibilities of the Commission.

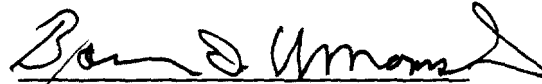
Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**

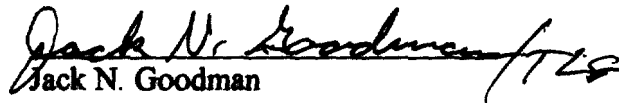
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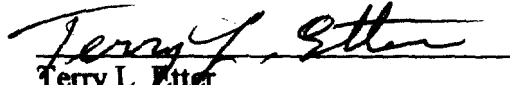
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